

JUL 10 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY ALONZO,

Plaintiff - Appellant,

v.

JAMES B. PEAKE, \*\* Secretary,  
Department of Veterans Affairs,

Defendant - Appellee.

No. 06-16483

D.C. No. CV-04-01622-  
GEB/CMK

MEMORANDUM \*

Appeal from the United States District Court  
for the Eastern District of California  
Garland E. Burrell, District Judge, Presiding

Submitted June 18, 2008 \*\*\*

Before: LEAVY, HAWKINS, and W. FLETCHER, Circuit Judges.

Anthony Alonzo appeals pro se from the district court's summary judgment

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* James B. Peake is substituted for his predecessor, Anthony J. Principi, as Secretary of the Department of Veterans Affairs, pursuant to Fed. R. App. P. 43(c)(2).

\*\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

for the Department of Veterans Affairs in his Title VII action alleging ethnic discrimination and retaliation. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Nilsson v. City of Mesa*, 503 F.3d 947, 951 (9th Cir. 2007), and we affirm.

The district court properly granted summary judgment because Alonzo did not raise a triable issue as to whether the conduct of which he complained occurred due to his ethnicity or in retaliation for earlier complaints of discrimination. *See id.* at 954-55 (affirming summary judgment for employer because plaintiff failed to meet her burden of raising a genuine issue of material fact with respect to her Title VII claim).

Because we are limited to the evidence of record, we cannot consider the declaration filed by Alonzo on May 31, 2007. *See Willis v. Pac. Mar. Ass’n*, 236 F.3d 1160, 1168 (9th Cir. 2001) (“The appellate court is limited to evidence in the record.”).

The district court did not abuse its discretion by declining to consider evidence submitted by Alonzo for the first time in his objections to the magistrate judge’s recommendation because Alonzo provided no reason to explain why that evidence was not previously presented to the magistrate judge. *See United States v. Howell*, 231 F.3d 615, 622 (9th Cir. 2000) (“[W]e conclude that a district court

has discretion, but is not required, to consider evidence presented for the first time in a party's objection to a magistrate judge's recommendation."").

**AFFIRMED.**